

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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Implementation of Sections 3(n) )  
and 332 of the Communications Act )  
 )  
Regulatory Treatment )  
of Mobile Services )

GN Docket No. 93-252

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF**  
**AMSC SUBSIDIARY CORPORATION**

AMSC Subsidiary Corporation ("AMSC") hereby submits its comments on the Notice of Proposed Rulemaking ("Notice") in the above-referenced docket.<sup>1/</sup> As discussed below, AMSC supports the Commission's proposal to include mobile satellite services among possible commercial mobile services that qualify for reduced regulation. The commercial mobile service market is extremely competitive and new entrants such as AMSC have no market power. AMSC therefore urges the Commission to use its new statutory authority to forbear from imposing on commercial mobile service providers in general and AMSC in particular much of the Title II regulation that was developed for dominant carriers. AMSC, however, seeks to retain the right to file tariffs, in the manner recently established for forborne common carriers.

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<sup>1/</sup> Notice of Proposed Rulemaking, Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (October 8, 1993).

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AMSC also seeks to retain the right to provide dispatch service.

### Background

AMSC is the entity licensed by the Commission to construct, launch and operate the U.S. domestic Mobile Satellite Service ("MSS") system.<sup>2/</sup> The first satellite is nearing completion and is targeted for launch in 1994. Work is progressing on the design and construction of the ground segment, and AMSC has signed contracts with more than 130 agents and resellers for the distribution of service. When complete, the \$500 million system will provide high-quality, two-way mobile voice and data communications to users on land, sea and in the air in the continental United States, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and coastal areas up to 200 miles offshore. Many of these services will be provided directly to end users and interconnected to the public switched telephone network, though AMSC will also provide service to private networks. AMSC is also authorized to provide fixed voice and data services via satellite to locations which are not served by cellular or fixed telephony.

In 1986, the Commission decided that the MSS licensee would be classified as a nondominant carrier subject to

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<sup>2/</sup> See Memorandum Opinion, Order and Authorization, 4 FCC Rcd. 6041 (1989), Final Decision on Remand, 7 FCC Rcd. 266 (1992), *aff'd sub nom.*, *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993).

streamlined regulation. The Commission classified the MSS licensee as nondominant because the service is new and developing and there are substitutes for many MSS services.<sup>3/</sup> Because there is only one MSS licensee, the Commission decided to apply streamlined regulation, which requires AMSC to file tariffs on 14 days notice but without the cost support required for dominant carriers.<sup>4/</sup> To further promote competition, the Commission also requires AMSC to provide nondiscriminatory access to resellers that construct their own ground segment.

In the Notice, the FCC requests comments on the regulatory treatment of mobile services, including mobile satellite services, as directed by Congress in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").<sup>5/</sup>

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3/ Second Report and Order, Gen. Docket No. 84-1234, 2 FCC Rcd. 485, 490 (1987). In 1987, the FCC noted numerous potential alternative providers of AMSC's services: rural telephone service using terrestrial radio; rural cellular service; offshore radio; rural radio; private land mobile radio; specialized mobile radio service; and radiodetermination satellite service. Id. Since 1987, AMSC's potential competitors have continued to grow in number, with the tremendous growth of wireless services such as cellular, the development of new services such as air-ground and mobile data, and the proposals for development of new technologies such as big and little LEOs and personal communications services.

4/ The Commission licensed only one MSS space segment provider in the assigned frequency bands due to, among other things, the high costs and risks of developing the new service, and the limited amount of spectrum allocated for the service.

5/ In the Budget Act, Congress adopted legislation that, inter alia, requires the FCC to create a comprehensive (continued...)

Specifically, the Notice seeks comment on which mobile services are to be regulated as commercial mobile services (common carrier regulation) and which are to be regulated as private mobile services (non-common carrier regulation).<sup>6/</sup> The Notice also seeks comment on those provisions of Title II of the Communications Act of 1934, as amended, that should not be applied to commercial mobile service providers.<sup>7/</sup>

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5/(...continued)

framework for the regulation of mobile radio services. Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

6/ A mobile service will be classified as "commercial" if it meets two criteria: the service (1) is "provided for profit", and (2) makes "interconnected service" available "to the public." 47 U.S.C. § 332(d)(1); Notice at ¶ 10.

7/ Revised Section 332 of the Communications Act gives the Commission specific authority to forbear from applying to commercial mobile services any provisions of Title II, except Sections 201, 202 and 208. 47 U.S.C. § 332(c)(1)(A) The Commission may forbear from imposing a section of Title II if the following findings are made:

- (i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers; and
- (iii) specifying such provision is consistent with the public interest.

47 U.S.C. § 332(c)(1)(A); Notice at ¶ 57.

### Discussion

In the Notice, the Commission proposes that mobile satellite services will be classified as commercial mobile services to the extent that those services are provided to end users. Notice at ¶ 43. AMSC supports the inclusion of satellite services among those to be regulated as commercial mobile services. Including satellite-delivered mobile services among commercial mobile services when appropriate helps to provide true parity among mobile service providers while providing the Commission with substantial discretion to forbear from imposing unnecessary regulation.

A flexible regulatory environment will facilitate the successful implementation of MSS, without harming the public interest. The commercial mobile services market is extremely competitive and AMSC and other MSS providers are new entrants with no market power. With such a substantial investment in its facilities and with the need to develop its business as quickly as possible, AMSC must be highly responsive to customer needs. Therefore, with respect to MSS as well as other commercial mobile services, the Commission should exercise its authority to forbear from applying Sections 203-205, 210-215, and 218-221 of the Communications Act to allow maximum flexibility in providing new services.

In addition, forbearance is appropriate because Sections 201, 202, and 208 of the Communications Act will

ensure that AMSC's commercial mobile service rates and regulations are just, reasonable, and not discriminatory, and that any aggrieved party will be able to file a formal complaint with the Commission or in Federal court.

AMSC also requests that the Commission permit it to tariff its services voluntarily in appropriate circumstances. As various other carriers have found, tariffing provides efficiencies in some circumstances, particularly when dealing with large numbers of similarly-situated customers.<sup>8/</sup> AMSC requests that it be permitted to file these tariffs in accordance with the rules recently established for nondominant carriers in CC Docket No. 93-36, rather than the more stringent rules for streamlined common carriers.<sup>9/</sup>

The Notice also asks for comment on the provision of the new law that gives the Commission added discretion to allow common carriers that are classified as commercial mobile service providers to provide dispatch services. 47 U.S.C. § 332(c)(2); Notice at ¶ 42. AMSC urges the Commission to take this opportunity to reiterate that MSS systems are permitted to provide dispatch services. The FCC

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<sup>8/</sup> See MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

<sup>9/</sup> See Memorandum Opinion and Order, Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36 (August 18, 1993).

has always contemplated that MSS include dispatch services.<sup>10/</sup> Allowing AMSC to provide dispatch service is technically justified because AMSC's broad satellite beams will cover entire regions of the country, thus making AMSC's services spectrum efficient. Furthermore, AMSC's dispatch services will promote increased competition in the dispatch service marketplace, and will provide AMSC with the maximum flexibility to meet its customers' needs.

Finally, in this proceeding the FCC should not impose safeguards on dominant common carriers with commercial mobile service affiliates. Each situation should be evaluated on a case-by-case basis, and include an investigation of market power, whether there are advantages to be gained by such affiliation that could be detrimental to the marketplace, and the appropriate safeguards relevant to that particular case.

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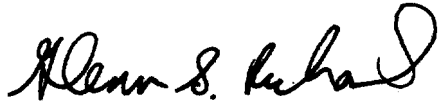
<sup>10/</sup> See, e.g., Notice of Proposed Rulemaking, Rules to Allocate Spectrum for, To Establish Rules and Policies Pertaining to, the Use of Radio Frequencies in Land Mobile Satellite Service for Various Common Carrier Services, RM-4247, 50 Fed. Reg. 8149, 8159 ¶ 46, 8168 Attachment E ¶ 2 (February 28, 1985).

Conclusion

For the above stated reasons, AMSC respectfully urges the Commission to adopt rules consistent with AMSC's position herein.

Respectfully submitted,

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Dated: November 8, 1993



CERTIFICATE OF SERVICE

I, Cynthia L. Smith, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that true copies of the foregoing "Comments of AMSC Subsidiary Corporation" were sent this 8th day of November 1993, by hand delivery to the following:

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